IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

WP(C).No. 30003 of 2007(V)

PETITIONER:

THOMAS PHILIP, AGED 77,
S/O.LATE V.M.PHILIP, VARAMPATH HOUSE,
BHAGATH SINGH NAGAR, NALANCHIRA,
THIRUVANANTHAPURAM.

BY ADV. SRI.BIJU HARIHARAN

RESPONDENT:

INDIAN OVERSEAS BANK,
SREEKANTESWARAM BRANCH,
THIRUVANANTHAPURAM,
REPRESENTED BY ITS MANAGER.

BY ADV. SRI.P.B.SURESH KUMAR, SC,I.O.BANK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 30003 OF 2007 V
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Dated this the 11th October, 2007

J U D G M E N T

The prayer in the writ petition is for returning the documents that are deposited by the petitioner for availing of a loan from the respondent bank. It is the common case of the parties that after the bank had obtained a recovery certificate from the Debts Recovery Tribunal in O.A. No. 14/05 the matter was settled between the parties by the bank accepting an offer from the petitioner for one time settlement. It is also not disputed by the bank that in terms of the one time settlement the petitioner has paid the amount in full which has been accepted by the bank in satisfaction of the petitioner's liability.

2. However, when the petitioner requested for return of the documents, that was not done. Petitioner submits that for raising the money to pay off the liability to the Bank he had to borrow from other sources and that these documents are necessary to be deposited in security thereof. It is in view of this

that this writ petition is filed praying for a direction to the bank to return the documents.

3. The Standing Counsel for the Bank now submits that while availing of the loan the petitioner had committed fraud and in terms of their guidelines, in a case like this concurrence of the Board of Directors is required and that without the concurrence the documents cannot be released. It is also submitted that they have placed the matter before the Board of Directors and the meeting will be conducted shortly, where this issue will also be decided.

4. If as contended by the Bank, one time settlement was not permissible in terms of the guidelines the bank should not have accepted the offer of the petitioner or at least should have returned the money at some point of time. This has not been done till date. At the same time, the petitioner is put to prejudice by the continued retention of the documents. He submits that these documents are to be deposited towards the security for the loan that he has now availed off or discharging the Bank's liability.

5. The bank cannot have the best of both.

Either it should accept the one time settlement or if it is not acceptable it should return the amount. This has not been done.

6. In these circumstances I see no justification for the refusal of the bank to return the documents. Therefore, there will be a direction to the respondents to return the documents deposited by the petitioner forthwith on the production of a copy of this judgment.

ANTONY DOMINIC
JUDGE

jan/-